federal register

THURSDAY, FEBRUARY 14, 1974

WASHINGTON, D.C.

Volume 39 ■ Number 32

PART II

ENVIRONMENTAL PROTECTION AGENCY

■

FEEDLOTS POINT SOURCE CATEGORY

Effluent Guidelines and Standards

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER N—EFFLUENT GUIDELINES AND STANDARDS

PART 412—FEEDLOTS POINT SOURCE CATEGORY

Effluent Limitations Guidelines

On September 7, 1973, notice was published in the FEDERAL REGISTER (38 FR 24466) that the Environmental Protection Agency (EPA or Agency) was proposing effluent limitations guidelines for existing sources and standards of performance and pretreatment standards for new sources within the duck subcategories, and all subcategories except ducks of the feedlots category of point sources.

The purpose of this notice is to establish final effluent limitations guidelines for existing sources and standards of performance and pretreatment standards for new sources in the feedlots category of point sources, by amending 40 CFR Chapter I, Subchapter N, to add a new Part 412. This final rulemaking is promulgated pursuant to sections 301, 304(b) and (c), 306(b) and (c) and 307(c) of the Federal Water Pollution Control Act, as amended (the Act); 33 U.S.C. 1251, 1311, 1314(b) and (c), 1316(b) and (c) and 1317(c); 86 Stat. 816 et seq.; Pub. L. 92-500. Regulations regarding cooling water intake structures for all categories of point sources under section 316(b) of the Act will be promulgated in 40 CFR Part 402.

In addition, the EPA is simultaneously proposing a separate provision which appears in the proposed rules section of the FEDERAL REGISTER, stating the application of the limitations and standards set forth below to users of publicly owned treatment works which are subject to pretreatment standards under section 307 (b) of the Act. The basis of that proposed regulation is set forth in the associated notice of proposed rulemaking.

The legal basis, methodology and factual conclusions which support promulgation of this regulation were set forth in substantial detail in the notice of public review procedures published August 6, 1973 (38 FR 21202) and in the notice of proposed rulemaking for all subcategories except ducks and the ducks subcategory. In addition, the regulations as proposed were supported by two other documents: (1) The document entitled "Development Document for Proposed Effluent Limitations Guidelines and New Source Performance Standards for the Feedlots Point Source Category" (August 1973) and (2) the document entitled "Economic Analysis of Proposed Effluent Guidelines, Feedlots" (August 1973). Both of these documents were made available to the public and circulated to interested persons at approximately the time of publication of the notice of proposed rulemaking.

Interested persons were invited to participate in the rulemaking by submitting written comments within 30 days from the date of publication. Prior public participation in the form of solicited comments and responses from the States, Federal agencies, and other interested parties were described in the preamble to the proposed regulation. The EPA has considered carefully all of the comments received and a discussion of these comments with the Agency's response thereto follows.

The regulation as promulgated contains important changes from the proposed regulation. The following discussion outlines the reasons why these changes were made and why other suggested changes were not implemented.

(a) Summary of comments.

The following responded to the request for written comments contained in the preamble to the proposed regulation: Five Federal agencies including the U.S. Department of Commerce and the U.S. Department of Agriculture; sixty-four national, state and local trade associations including the National Livestock Feeders Association, American National Cattlemen's Association, National Milk Producers Federation, National Pork Producers Council, and the National Broiler Council; eight public interest groups including the Natural Resources Defense Council and the Lake Gage-Lime Lake Association; twenty-one universities and colleges including Iowa State University, Kansas State University, University of Minnesota, University of Wisconsin, Texas A and M University, Oklahoma State University and Oregon State University; twenty state and local governmental agencies including the Missouri Clean Water Commission, Wisconsin Department of Natural Resources, Minnesota Pollution Control Agency, Illinois Environmental Protection Agency, State of Indiana, Suffolk County (N.Y.) Environmental Control Commission; approximately one hundred inquiries from members of the United States Congress; and several hundred private citizens and interested individuals.

Each of the comments received was reviewed and analyzed carefully. The following is a summary of the significant comments and the Agency's response to those comments.

(1) It was suggested that the definition of a feedlot and certain synonyms or common designations describing various types of livestock operations be clarified as to the specific nature of crop growth in a non-feedlot condition and specific operations covered.

The proposed definition of a feedlot provided that if crop production could be or was sustained in the area where livestock were housed or penned, the livestock holding area would not constitute a feedlot. The definition in the final regulation has been modified to show that if either crop or forage growth or production is sustained, the operation would not constitute a feedlot. Therefore, when conditions exist where the density of livestock in any given area precluded the growth or production of crops or forage, and the other elements of the definition were met, those conditions would describe a feedlot. Substantial numbers of operations which may constitute a feedlot in the strict sense, particularly smaller facilities, may consider management options which dispersed or decentralized livestock in order to provide crop or forage growth. Under the latter circumstances the combined effect of soil and vegetative assimilation of manure and the lower rate of manure deposition per unit area could reasonably be expected to preclude any significant pollution problem.

Certain generic words or descriptive terminology such as "dry lot", "hard" surface, or others frequently used to designate livestock operations but not included in the proposed regulation have been incorporated in the final regulation.

(2) Comments and suggestions were made regarding the differences between, and impact of, chronic rainfall upon any runoff control facility. The primary point was that a series of rainfall events with or without coincident snowmelt were the major cause of a discharge and that controlling a given storm event would not necessarily preclude a discharge from chronic precipitation even if all possible means of prevention were used.

Several suggestions were that it was inappropriate for the regulations to refer only to controlling discharges from a given storm event, in that a series of rainfall events or snowmelt were the major causes of discharges from feedlots.

These comments are generally valid to the extent that chronic rainfall or snowmelt are the primary cause of discharges in many areas. The final regulations make it clear that exceptions to the "no discharge" standard are not limited to those occasioned by a given storm event, but include discharges attributable to the cumulative effect of rainfall or snowmelt over a period of time.

(3) A number of comments requested clarification of whether the proposed regulation prescribed performance standards or design criteria to the extent that it contained exceptions for excessive rainfall.

The exceptions in §§ 412.12(b), 412.13 (b), 412.15(b) and 412.23(b) provided recognition of the fact that the basic technology for preventing discharges from feedlots requires containment facilities. Containment facilities have physical limitations on their capacity to compensate for unusual rainfall, resulting in occasional unavoidable overflows.

It is not the intent of EPA in this regulation to establish a design standard for control facilities for feedlots. The regulation promulgated below is a performance standard of "no discharge" subject to an exception for discharges attributable to unusual rainfall events. There are numerous types of control facilities which can be utilized to qualify for the exception (e.g., impoundment ponds, diversion ditches, terraces etc.) and operators have broad flexibility to select their control facility in the light of local hydrologic data, soil conditions, weather conditions, waste utilization plans and other information.

Similarly, EPA does not intend to establish operating criteria for feedlot waste control facilities. Rather, this regulation establishes a performance standard with an exception and, to qualify for this exception, the operator is free to choose any method of operation, providing the method of operation causes the facility to contain process generated waste waters and usual rainfall events. Such methods may normally include removal of the stored waste waters for purposes of irrigation or other land utilization of the waste in accordance with accepted agricultural practices which prevent discharge to navigable waters, and maintain the facility in a state of availability to contain runoff from recurring or subsequent rainfalls.

(4) The point was made that the 25 year, 24 hour storm requirement as a basis for the limitation under best available technology was unnecessary and unwarranted.

The technology is the same for controlling precipitation runoff, regardless of the nature of the precipitation period. In the feedlots industry, a variable degree of effluent control is already manifest. Whereas several States and areas have implemented controls on the basis of a 10 year, 24 hour storm, many areas already require or recommend somewhat higher control levels: For example a 25 year, 24 hour storm or long-term (60 days or more) precipitation and runoff storage serve as the basic control requirement in many areas. The increased control requirements are found in arid or semi arid areas such as the State of Texas and in humid areas such as the States of Minnesota, Illinois, and Indiana. In some instances where the 10 year storm criteria prevails, site conditions or management decisions impact upon higher degree of control (for example, the desire to minimize impoundment dewatering requirements by increasing design capacities).

As a result, it is clear that the higher control requirements are in place, available and economically achievable for the feedlots industry. Furthermore, existing facilities will generally be able to expand present waste water control systems in the future to account for increased control levels without undue difficulty.

(5) The vast majority of comments and subsequent discussions within the agency centered on the issue that small farms, which included small feedlots, should be excluded from the requirements of the proposed regulation.

From available information, there is substantial evidence that large feedlots can institute process waste water controls relating to the runoff from a 10 year, 24 hour storm and other process discharges such as the flushing of pens or manure pits without any undue economic hardship. For the present, the thurst of the final regulations is therefore directed at those operations as large or larger than the specified sizes, i.e., 1000 beef cattle, 2500 swine, 700 dairy cattle, and others as indicated. With respect to operations smaller than these, the Agency is now reviewing a substantial amount of information submitted during the public comment period to ascertain detailed economic impact information and possible further segmentation of the industry on the basis of size. Subsequent to the completion of this analysis, effluent limitations applicable to smaller operations will be proposed for public comment.

(6) It was suggested that dewatering periods (or frequency for emptying impoundments or other storage facilities) be specifically indicated with regard to runoff control.

As is discussed in the Development Document, the variability in state and local requirements, individual site conditions, and choice of runoff control procedures make detailed specification of dewatering requirements untenable. In addition to problems of reliability in predicting the probability of a discharge, with or without any assumption on dewatering, the fact is that runoff controls may be overdesigned to preclude all but the most infrequent dewatering activities. On the other hand, dewatering of runoff control impoundments can often be successfully related to crop or soil moisture needs and not on the sole basis of keeping the impoundment "pumped down" or empty purely for pollution control. However, as is discussed in comment (3), any process waste water control facility is to be operated in a manner to help assure that discharges from recurring runoff are minimized. The conditions and management options for any given site must be used to ascertain whether the chosen runoff controls are "small" with frequent dewatering: "large" with infrequent or no dewatering; require an emergency pump-out capability or other option. Assigning specific dewatering requirements unnecessarily and often incorrectly restricts the flexibility required to properly control runoff for the vast variety of sites which exist throughout the country.

(7) The point was raised that so-called "order-buyer" operations (which involve short term holding of feeder cattle for subsequent transfer to long term feeding at feedlots) auction yards, stockyards or related facilities were not specifically covered by the regulation.

Within the definition of a feedlot in the proposed regulation and final regulation, criteria such as concentration of animals, crop or forage growth or production being sustained, and feeding at the place of confinement (no time frame is stipulated) are clearly satisfied by the types of operations in question. For the most part these operations are open lots or partially covered lots which often handle a mixture of animal types; consequently, they may be affected by either the size requirements for individual animal types or the combination criteria stipulated in the final regulation.

(8) Suggestions with respect to the duck growing subcategories related to the proposed regulation requiring operations to achieve zero discharge by 1983 and the propriety of meeting this requirement or even achieving zero discharge (subject to the storm overflow exemptions discussed in comment (2) above) as early as 1977.

As is discussed in the Development Document and the preamble to the proposed regulations, the duck growing subcategories are already accomplishing rather successful effluent control using biological treatment. The treatment systems are used primarily for the "wet" lot operations, but "dry" lots also use treatment. The latter type of production facility generally utilizes water only for drinking and thus eliminates swimming areas (wet lots) from the production process. Nevertheless, the drinking water is usually contaminated to some degree and treatment is required. For the dry lot operations, only one is known to achieve no discharge (using irrigation) and one is planning to install a similar system soon. As a consequence, best practicable technology may be defined only on the basis of the efficient biological treatment systems. Also, the process changes required to shift from wet lot to dry lot operations fall only within the scope of best available technology for existing sources and best available demonstrated technology for new sources. Therefore, in the opinion of EPA, the proposed regulations for duck operations were defined appropriately from the available data and these regulations are set forth in final form.

(b) Revision of the proposed regulation prior to promulgation.

As a result of public comments and continuing review and evaluation of the proposed regulations by the EPA, the following changes have been made in the regulation.

(1) The applicability of limitations for existing sources and standards of performance for new sources for Subpart A, § 412.10 has been clarified to reflect that specific sizes of operations for each animal type are affected by the limitations: (as large or larger than) 1000 slaughter steers and heifers, 700 mature dairy cattle; 2500 swine; and other sizes as defined.

(2) The applicability of limitations for existing sources and standards of performance for new sources for Subpart B, § 412.20 has been clarified to reflect applicability to the duck subcategories of sizes of 5000 or more ducks.

(3) The definition of a feedlot in Subparts A and B has been slightly amplified to recognize that either crop or forage growth or production are to be sustained in an area of confined or concentrated animal housing if that area is not to be classified as a feedlot.

(4) Several specialized definitions common to both Subparts A and B, §§ 412.11 and 412.21 respectively, have been clarified, and changed, or have been added to help explain the meaning and intent of the limitations.

Definitions for "process waste water" and certain subcategory designations have been modified; definitions for "process generated waste water" and "10 year, 24 hour or 25 year, 24 hour" rainfall events have been added.

(5) Even though the specific reference to rainfall event (whether 10 year, 24 hour or 25 year, 24 hour) has not been changed, the language of the limitations for existing sources and standards of performance for new sources has been substantially rewritten to show that (i) the expected level of performance is no discharge of process waste water pollutants to navigable waters, and (ii) the overflow from those systems caused by excessive chronic or catastrophic precipitation may be discharged without regard to pollutants in, or volume of, the overflow.

(6) Section 304(b)(1)(B) of the Act provides for "guidelines" to implement the uniform national standards of section 301(b)(1)(A). Thus Congress recognized that some flexibility was necessary in order to take into account the complexity of the industrial world with respect to the practicability of pollution control technology. In conformity with the Congressional intent and in recognition of the possible failure of these regulations to account for all factors bearing on the practicability of control technology, it was concluded that some provision was needed to authorize flexibility in the strict application of the limitations contained in the regulation where required by special circumstances applicable to individual dischargers. Accordingly, a provision allowing flexibility in the application of the limitations representing best practicable control technology currently available has been added to each subpart, to account for special circumstances that may not have been adequately accounted for when these regulations were developed.

(c) Economic impact.

Even though the proposed regulations affected all sizes of operations, the above listed changes will not significantly affect the conclusions of the economic study of the proposed regulations. The larger feedlots to which the final regulations apply are the least impacted segment regarding costs of treatment alternatives described in the Development Document and the proposed regulations. With respect to operations of smaller capacities than stipulated in the regulation, data submitted during the comment period is being incorporated into further analyses of economic impact of the limitations upon these sizes. Pending results of these analyses, effluent limitations affecting smaller operations will be proposed for public comment at a later date.

(d) Cost-benefit analysis.

The detrimental effects of the constituents of waste waters now discharged by point sources within the feedlots point source category are discussed in Section VI of the report entitled "Development Document for Effluent Limitations Guidelines for the Feedlots Point Source Category" (January 1974). It is not feasible to quantify in economic terms, particularly on a national basis, the costs resulting from the discharge of these pollutants to our Nation's waterways. Nevertheless, as indicated in section VI, the pollutants discharged have substantial and damaging impacts on the quality of water and therefore on its capacity to support healthy populations of wildlife, fish and other aquatic wildlife and on its suitability for industrial, recreational and drinking water supply uses.

The total cost of implementing the effluent limitations guidelines includes the direct capital and operating costs of the pollution control technology employed to achieve compliance and the indirect economic and environmental costs identified in section VIII and in the supplementary report entitled "Economic Analysis of Proposed Effluent Guidelines FEEDLOTS INDUSTRY" (August 1973). Implementing the effluent limitations guidelines will substantially reduce the environmental harm which would otherwise be attributable to the continued discharge of polluted waste waters from existing and newly constructed facilities in the feedlots industry. The Agency believes that the benefits of thus reducing the pollutants discharged justify the associated costs which, though substantial in absolute terms, represent a relatively small percentage of the total capital investment in the industry.

(e) Publication of information on processes, procedures, or operating methods which result in the elimination or reduction of the discharge of pollutants.

In conformance with the requirements of Section 304(c), a manual entitled, "Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Feedlots Point Source Category," has been published and is available for purchase from the Government Printing Office, Washington, D.C. 20401 for a nominal fee.

(f) Final rulemaking.

In consideration of the foregoing, 40 CFR Chapter I, Subchapter N is hereby amended by adding a new Part 412, Feedlots Point Source Category, to read as set forth below. This final regulation is promulgated as set forth below and shall be effective April 15, 1974.

Dated: January 31, 1974.

JOHN QUARLES,
Acting Administrator.

Subpart A—All Subcategories Except Ducks

Sec.
412.10 Applicability; description of all subcategories except ducks.
412.11 Specialized definitions.
412.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
412.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
412.14 Reserved.
412.15 Standards of performance for new sources.
412.16 Pretreatment standards for new sources.

Subpart B—Ducks Subcategory

Sec.
412.20 Applicability; description of the duck subcategory.
412.21 Specialized definitions.
412.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
412.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
412.24 Reserved.
412.25 Standards of performance for new sources.
412.26 Pretreatment standards for new sources.

Subpart A—All Subcategories Except Ducks

§ 412.10 Applicability; description of all subcategories except ducks.

The provisions of this subpart are applicable to discharges of pollutants resulting from feedlots in the following subcategories: Beef cattle—open lots; beef cattle—housed lots; dairy cattle—stall barn (with milk room); dairy—free stall barn (with milking center); dairy—cowyards (with milking center); swine—open dirt or pasture lots; swine—housed, slotted floor; swine—solid concrete floor, open or housed lot; sheep—open lots; sheep—housed lots; horses—stables (race tracks); chickens—broilers, housed; chickens—layers (egg production), housed; chickens—layer breeding or replacement stock; housed; turkeys—open lots; turkeys—housed; and for those feedlot operations within these subcategories as large or larger than the capacities given below:

1,000 slaughter steers and heifers; 700 mature dairy cattle (whether milkers or dry cows); 2,500 swine weighing over 55 pounds; 10,000 sheep; 55,000 turkeys; 100,000 laying hens or broilers when facility has unlimited continuous flow watering systems; 30,000 laying hens or broilers when facility has liquid manure handling system; 500 horses; and 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep.

§ 412.11 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "feedlot" shall mean a concentrated, confined animal or poultry growing operation for meat, milk or egg production, or stabling, in pens or houses wherein the animals or poultry are fed at the place of confinement and crop or forage growth or production is not sustained in the area of confinement.

(c) The term "process waste water" shall mean any process generated waste water and any precipitation (rain or snow) which comes into contact with any manure, litter or bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g. milk, eggs).

(d) The term "process generated waste water" shall mean water directly or indirectly used in the operation of a feedlot for any or all of the following: Spillage or overflow from animal or poultry

watering systems; washing, cleaning or flushing pens, barns, manure pits or other feedlot facilities; direct contact swimming, washing or spray cooling of animals; and dust control.

(e) The terms "10 year, 24 hour rainfall event" and "25 year, 24 hour rainfall event" shall mean a rainfall event with a probable recurrence interval of once in ten years or twenty-five years, respectively, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

(f) The term "open lot" shall mean pens or similar confinement areas with dirt, or concrete (or paved or hard) surfaces wherein animals or poultry are substantially or entirely exposed to the outside environment except for possible small portions affording some protection by windbreaks, small shed-type shade areas. For the purposes hereof the term "open lot" is synonymous with the terms "cowyard" (dairy cattle), "pasture lot" (swine), and "dirt lot" (swine, sheep or turkeys), "dry lot" (swine, cattle, sheep, or turkeys) which are terms widely used in the industry.

(g) The term "housed lot" shall mean totally roofed buildings which may be open or completely enclosed on the sides wherein animals or poultry are housed over solid concrete or dirt floors, slotted (partially open) floors over pits or manure collection areas in pens, stalls or cages, with or without bedding materials and mechanical ventilation. For the purposes hereof, the term "housed lot" is synonymous with the terms "slotted floor" buildings (swine, beef), "barn" (dairy cattle) or "stable" (horses), "houses" (turkeys, chickens), which are terms widely used in the industry.

(h) The term "stall barn" shall mean specialized facilities wherein producing cows and replacement cows are milked and fed in a fixed location.

(i) The term "free stall barn" shall mean specialized facilities wherein producing cows are permitted free movement between resting and feeding areas.

(j) The term "milkroom" shall mean milk storage and cooling rooms normally used for stall barn dairies.

(k) The term "milking center" shall mean a separate milking area with storage and cooling facilities adjacent to a free stall barn or cowyard dairy operation.

§ 412.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharge effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) Subject to the provisions of paragraph (b) of this section, the following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available: There shall be no discharge of process waste water pollutants to navigable waters.

(b) Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 10 year, 24 hour rainfall event for the location of the point source.

§ 412.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) Subject to the provisions of paragraph (b) of this section, the following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable: There shall be no discharge of process waste water pollutants to navigable waters.

(b) Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25 year, 24 hour rainfall event for the location of the point source.

§ 412.14 [Reserved]

§ 412.15 Standards of performance for new sources.

(a) Subject to the provisions of paragraph (b) of this section, the following standards of performance establish the quantity or quality of pollutants or pollutant properties which may be discharged by a source subject to the provisions of this subpart: There shall be no discharge of process waste water pollutants to navigable waters.

(b) Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25 year, 24 hour rainfall event for the location of the point source.

§ 412.16 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within all subcategories except ducks which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in 40 CFR Part 128, except that, for the purpose of this section, § 128.133 of this title shall be amended to read as follows:

"In addition to the prohibitions set forth in 40 CFR 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in 40 CFR 412.15; provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall, except in the case of standards providing for no discharge of pollutants, be correspondingly reduced in stringency for that pollutant."

Subpart B—Ducks Subcategory

§ 412.20 Applicability; description of the ducks subcategory.

The provisions of this subpart are applicable to discharges of pollutants resulting from feedlots for the following subcategories: ducks—dry lot; ducks—wet lot; and for those feedlot operations within these subcategories as large or larger than the capacities given below:

5,000 ducks

§ 412.21 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "feedlot" shall mean a concentrated, confined animal or poultry growing operation for meat, milk or egg production, or stabling, in pens or houses wherein the animals or poultry are fed at the place of confinement and crop or forage production or growth is not sustained in the area of confinement.

(c) The term "process waste water" shall mean any process generated waste water and any precipitation (rain or snow) which comes into contact with any manure, litter or bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animal or poultry or direct products (e.g. milk, eggs).

(d) The term "process generated waste water" shall mean water directly or indirectly used in the operation of a feedlot for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning or flushing pens, barns, manure pits or other feedlot facilities; direct contact swimming, washing or spray cooling of animals; and dust control.

(e) The terms "10 year, 24 hour rainfall event" and "25 year, 24 hour rainfall event" shall mean a rainfall event with a probable recurrence interval of once in ten years or twenty-five years, respectively, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

(f) The term "dry lot" shall mean a confinement facility for growing ducks in confinement with a dry litter floor cover and no access to swimming areas.

(g) The term "wet lot" shall mean a confinement facility for raising ducks which is open to the environment with a small portion of shelter area, and with open water runs and swimming areas to which ducks have free access.

§ 412.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed
Metric units (kg/1,000 ducks)		
BOD5	1.66	0.91
Fecal coliform	Not to exceed mpn of 400/100 ml at any time.	

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed
English units (lb/1,000 ducks)		
BOD5	3.66	2.00
Fecal coliform	See above (not typically expressed in English units).	

§ 412.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) Subject to the provisions of paragraph (b) of this section, the following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable: there shall be no discharge of process waste water pollutants to navigable waters.

(b) Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25 year, 24 hour rainfall event for the location of the point source.

§ 412.24 [Reserved]

§ 412.25 Standards of performance for new sources.

(a) Subject to the provisions of paragraph (b) of this section, the following standards of performance establish the quantity or quality of pollutants or pollutant properties which may be discharged by a source subject to the provisions of this subpart: there shall be no discharge of process waste water pollutants to navigable waters.

(b) Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25 year, 24 hour rainfall event for the location of the point source.

§ 412.26 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within the ducks subcategory, which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in 40 CFR Part 128, except that, for the purpose of this section, § 128.133 of this title shall be amended to read as follows:

"In addition to the prohibitions set forth in 40 CFR 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in 40 CFR 412.15; provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall, except in the case of standard providing for no discharge of pollutants, be correspondingly reduced in stringency for that pollutant."

[FR Doc.74-3502 Filed 2-13-74;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 412]

APPLICATION OF EFFLUENT LIMITATIONS GUIDELINES FOR EXISTING SOURCES TO PRETREATMENT STANDARDS FOR INCOMPATIBLE POLLUTANTS FOR THE FEEDLOTS POINT SOURCE CATEGORY

Notice of Proposed Rulemaking

Notice is hereby given pursuant to sections 301, 304 and 307(b) of the Federal Water Pollution Control Act, as amended (the Act); 33 U.S.C. 1251, 1311, 1314 and 1317(b); 86 Stat. 816 et seq.; Pub. L. 92-500, that the proposed regulation set forth below concerns the application of effluent limitations guidelines for existing sources to pretreatment standards for incompatible pollutants. The proposal will amend 40 CFR Part 412—Feedlots Point Source Category, establishing for each subcategory therein the extent of application of effluent limitations guidelines to existing sources which discharge to publicly owned treatment works. The regulation is intended to be complementary to the general regulation for pretreatment standards set forth at 40 CFR Part 128. The general regulation was proposed July 19, 1973 (38 FR 19236), and published in final form on November 8, 1973 (38 FR 30982).

The proposed regulation is also intended to supplement a final regulation being simultaneously promulgated by the Environmental Protection Agency (EPA or Agency) which provides effluent limitations guidelines for existing sources and standards of performance and pretreatment standards for new sources within all subcategories except ducks and the ducks subcategory of the feedlots point source category. The latter regulation applies to the portion of a discharge which is directed to the navigable waters. The regulation proposed below applies to users of publicly owned treatment works which fall within the description of the point source category to which the guidelines and standards (40 CFR Part 412) promulgated simultaneously apply. However, the proposed regulation applies to the introduction of incompatible pollutants which are directed into a publicly owned treatment works, rather than to discharges of pollutants to navigable waters.

The general pretreatment standard divides pollutants discharged by users of publicly owned treatment works into two broad categories: "compatible" and "incompatible." Compatible pollutants are generally not subject to pretreatment standards. (See 40 CFR 128.110 (State or local law) and 40 CFR 128.131 (Prohibited wastes) for requirements which may be applicable to compatible pollutants.) Incompatible pollutants are subject to pretreatment standards as provided in 40 CFR 128.133, which provides as follows:

"In addition to the prohibitions set forth in Section 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works by a major contributing industry not subject to Section 307(c) of the Act shall be, for sources within the corresponding industrial or commercial category, that established by a promulgated effluent limitations guidelines defining best practicable control technology currently available pursuant to Sections 301 (b) and 304(b) of the Act; provided that, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant; and provided further that *when the effluent limitations guidelines for each industry is promulgated, a separate provision will be proposed concerning the application of such guidelines to pretreatment.*" (Italics added).

The regulation proposed below is intended to implement that portion of § 128.133, above, requiring that a separate provision be made stating the application to pretreatment standards of effluent limitations guidelines based upon best practicable control technology currently available.

Questions were raised during the public comment period on the proposed general pretreatment standard (40 CFR Part 128) about the propriety of applying a standard based upon best practicable control technology currently available to all plants subject to pretreatment standards. In general, EPA believes the analysis suporting the effluent limitations guidelines is adequate to make a determination regarding the application of those standards to users of publicly owned treatment works. However, to ensure that those standards are appropriate in all cases, EPA now seeks additional comments focusing upon the application of effluent limitations guidelines to users of publicly owned treatment works.

Sections 412.15 and 412.26 of the proposed regulation for point sources within all subcategories except ducks and ducks subcategory (September 1973; 38 FR 24467), contained the proposed pretreatment standard for new sources. The regulation promulgated simultaneously herewith contains §§ 412.16 and 412.26 which state the applicability of standards of performance for purposes of pretreatment standard for new sources.

A preliminary Development Document was made available to the public at approximately the time of publication of the notice of proposed rulemaking and the final Development Document is now being published. The economic analysis report was made available at the time of proposal. Copies of the final Development Document and economic analysis report will continue to be maintained for inspection and copying during the comment period at the EPA Information Center, Room 227, West Tower, Waterside Mall, 401 M Street, SW, Washington, D.C. Copies will also be available for inspection at EPA regional offices and at State water pollution control agency offices. Copies of the Development Document may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Copies of the economic analysis report will be available for purchase through the National Technical Information Service, Springfield, Virginia 22151.

On June 14, 1973, the Agency published procedures designed to insure that, when certain major standards, regulations, and guidelines are proposed, an explanation of their basis, purpose and environmental effects is made available to the public. (38 FR 15653) The procedures are applicable to major standards, regulations and guidelines which are proposed on or after December 31, 1973, and which either prescribe national standards of environmental quality or require national emission, effluent or performance standards or limitations.

The Agency determined to implement these procedures in order to insure that the public was provided with background information to assist it in commenting on the merits of a proposed action. In brief, the procedures call for the Agency to make public the information available to it delineating the major environmental effects of a proposed action, to discuss the pertinent nonenvironmental factors affecting the decision, and to explain the viable options available to it and the reasons for the option selected.

The procedures contemplate publication of this information in the FEDERAL REGISTER, where this is practicable. They provide, however, that where such publication is impracticable because of the length of these materials, the material may be made available in an alternate format.

The Development Document referred to above contains information available to the Agency concerning the major environmental effects of the regulation proposed below. The information includes: (1) The identification of pollutants present in waste waters resulting from the production of livestock and direct products such as milk and eggs, the characteristics of these pollutants, and the degree of pollutant reduction obtainable through implementation of the proposed standard; and (2) the anticipated effects on other aspects of the environment (including air, subsurface waters, solid waste disposal and land use, and noise) of the treatment technologies available to meet the standard proposed.

The Development Document and the economic analysis report referred to above also contain information available to the Agency regarding the estimated cost and energy consumption implications of those treatment technologies and the potential effects of those costs on the price and production of livestock and direct products. The two reports exceed, in the aggregate, 100 pages in length and contain a substantial number of charts, diagrams and tables. It is clearly impracticable to publish the material contained in these documents in the FEDERAL REGISTER. To the extent possible, significant aspects of the material have been presented in summary form in the preamble to the proposed regulation containing effluent

limitations guidelines, new source performance standards and pretreatment standards for new sources within the feedlots point source category (38 FR 24467; September 7, 1973). Additional discussion is contained in the analysis of public comments on the proposed regulation and the Agency's response to those comments. This discussion appears in the preamble to the promulgated regulation (40 CFR Part 412) which currently is being published in the rules and regulations section of the FEDERAL REGISTER.

The options available to the Agency in establishing the level of pollutant reduction obtainable through the best practicable control technology currently available, and the reasons for the particular level of reduction selected are discussed in the documents described above. In applying the effluent limitations guidelines to pretreatment standards for the introduction of incompatible pollutants into municipal systems by existing sources in all subcategories except ducks and the ducks subcategory, the Agency has, essentially, three options. The first is to declare that the guidelines do not apply. The second is to apply the guidelines unchanged. The third is to modify the guidelines to reflect: (1) Differences between direct dischargers and plants utilizing municipal systems which affect the practicability of the latter employing the technology available to achieve the effluent limitations guidelines; or (2) characteristics of the relevant pollutants which require higher levels of reduction (or permit less stringent levels) in order to insure that the pollutants do not interfere with the treatment works or pass through them untreated.

As described in the Development Document, the process waste waters from all subcategories except ducks contain solids, organic materials and nutrients. In rare instances, feedlot operations in these subcategories such as milk or egg producers, or stockyards, may be so located as to have a storm runoff discharge or a discharge from livestock watering systems to publicly owned treatment works. Such discharges may be expected to contain high concentrations of the above pollutants in the runoff and low concentrations in discharges from watering systems. In the opinion of the EPA, suitable design and capacity can be provided for the treatment works to account for the intermittent concentrated storm discharges or continuous low concentration livestock drinking water overflows. Accordingly, the first option should be applicable and the guidelines would not apply to operations in all subcategories except ducks which discharge to publicly owned treatment works.

This first option should also apply to operations in the ducks subcategories. While these operations contain solids, organic materials and nutrients, information described in the Development Document shows that the concentration of the pollutants is relatively low and the discharge is considerably diluted in duck growing processes (swimming areas). Very low concentrations may be encountered if drinking water systems provide the only discharge. In both instances, the pollutants are amenable to treatment in publicly owned treatment works and should therefore be discharged to such works without requirements for pretreatment.

Interested persons may participate in this rulemaking by submitting written comments in triplicate to the EPA Information Center, Environmental Protection Agency, Washington, D.C. 20460, Attention: Mr. Philip B. Wisman. Comments on all aspects of the proposed regulations are solicited. In the event comments are in the nature of criticisms as to the adequacy of data which is available, or which may be relied upon by the Agency, comments should identify and, if possible, provide any additional data which may be available and should indicate why such data is essential to the development of the regulations. In the event comments address the approach taken by the Agency in establishing pretreatment standards for existing sources, EPA solicits suggestions as to what alternative approach should be taken and why and how this alternative better satisfies the detailed requirements of sections 301, 304 and 307(b) of the Act.

A copy of all public comments will be available for inspection and copying at the EPA Information Center, Room 227, West Tower, Waterside Mall, 401 M Street SW., Washington, D.C. 20460. The EPA information regulation, 40 CFR Part 2, provides that a reasonable fee may be charged for copying.

In consideration of the foregoing, it is hereby proposed that 40 CFR Part 412 be amended to add §§ 412.14 and 412.24. All comments received on or before March 18, 1974 will be considered.

Dated: January 31, 1974.

JOHN QUARLES,
Acting Administrator.

40 CFR Part 412 is proposed to be amended as follows:

Subpart A is amended by adding § 412.14 as follows:

§ 412.14 Pretreatment Standards for Existing Sources.

For the purpose of pretreatment standards for incompatible pollutants established under 40 CFR 128.133, the effluent limitations guidelines set forth in 40 CFR 412.12 above shall not apply and, subject to the provisions of 40 CFR Part 128 concerning pretreatment, process waste water from this subcategory may be introduced into a publicly owned treatment works.

Subpart B is amended by adding § 412.24 as follows:

§ 412.24 Pretreatment Standards for Existing Sources.

For the purpose of pretreatment standards for incompatible pollutants established under 40 CFR 128.133, the effluent limitations guidelines set forth in 40 CFR 412.22 above shall not apply and, subject to the provisions of 40 CFR Part 128 concerning pretreatment, process waste water from this subcategory may be introduced into a publicly owned treatment works.

[FR Doc.74-3503 Filed 2-13-74;8:45 am]